

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13399, of Oliver A. Cowan, Jr., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3105.42 to permit the construction of two new principal apartment buildings and a variance from the floor area ratio requirements (Sub-section 3302.1) in an R-5-A District at the premises 1931-1953 1/2 Missouri Avenue, N.W., (Square 2792, Lot 802).

HEARING DATE: December 17, 1980
DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. The subject lot 802 is a through lot, fronting on both Missouri Avenue and Rock Creek Ford Road, N.W., and is known as premises 1931-1953 1/2 Missouri Avenue, N.W. It is in an R-5-A District.

2. The subject site has an area of 31,248 square feet, or .717 acres of land area and is undeveloped except for a gravel driveway fronting on Missouri Avenue. The rest of the lot is densely wooded with trees and under brush. The site slopes downhill from north to south and is irregularly shaped.

3. To the north of the subject site is Rock Creek Ford Road, a thirty-three foot wide right-of-way, followed by apartment houses in an R-5-A District. To the northeast are the rear yards of apartment buildings in an R-5-A District. To the east is a two story single family detached dwelling of frame construction. To the south is Missouri Avenue, a six lane right-of-way, with metered parking, followed by apartment buildings. A Federal park land abuts the site to the west.

4. The applicant proposes to construct two apartment buildings, with three units in Building 1 and fifteen units in Building 2. The basic component of the apartment building takes a triplex form; that is, two, twenty-foot wide two-level, three bedroom units over one forty-foot wide single level two bedroom unit. All of the dwelling units are entered from the ground level. There are six, two bedroom units and twelve three bedroom units in this development. The three bedroom units have balconies and the two bedroom units have patios. All units will have a fireplace and fully equipped kitchens with trash compactors. Although the City will not pick-up trash from condominium units, the project will have private trash pick-up from each unit. All the units will be sold as condominiums.

5. The buildings will be constructed of brick with asphalt shingle roofs. The facade treatment will be similar to those of the newly constructed Brummel Manor development on Blair Road near the Takoma Metro station.

6. Nineteen off-street parking spaces will be provided. Eighteen spaces are required under the Zoning Regulations.

7. A tot lot will be located adjacent to the Federal park land on the southwest area of the site.

8. The applicant is requesting a special exception to permit the construction of the two buildings and a variance from the FAR requirements. The Zoning Regulations permit a floor area ratio of 0.9. The applicant's plans exceed the allowable FAR by 306.21 square feet or one percent. Although the project is on one recorded lot, the applicant is required to provide theoretical lot lines for each building. The FAR of building No. 1 is 0.52. The FAR of building No. 2 is 0.91. The combined FAR is 0.8.

9. The owner of the adjacent property at 1329 Missouri Avenue by letter of December 3, 1980, expressed the following concerns:

- a. Property boundaries: The neighbor believed that the property records supporting the application were incorrect, and that the development may be encroaching onto his property.
- b. Flooding and Drainage: The neighbor questioned whether there would be sufficient drainage to prevent flooding that would negatively affect his property.
- c. Ecology and Privacy: The neighbor was concerned that appropriate measures be taken to prevent trash, mud and debris from accumulating on the property during construction. He further requested that a privacy fence be erected between the proposed development and his property.
- d. Trash Collection: The neighbor was concerned that trash collection be handled so as to minimize the possibility of attracting rodents.
- e. Insurance: The neighbor requested that the owner and/or builder have insurance coverage that will protect his property from any damage resulting from construction activity.

- f. Parking: Nineteen parking spaces are planned for the eighteen housing units. The 1300 block of Missouri Avenue, N.W., already has a serious parking problem and it appears that the limited number of planned parking spaces will only increase the congestion.

10. Pursuant to Paragraph 3105.42, the application was referred to the Office of Planning and Development, the Department of Transportation, the Department of Housing and Community Development and the Department of Environmental Services.

11. By report filed December 15, 1980, the Office of Planning and Development recommended that the application be approved subject to the applicant's compliance with conditions specified by other District or Federal agencies and that the concerns of the neighboring property owner at 1329 Missouri Avenue are resolved. In further regard to the protection of privacy to this affected property the OPD suggested an alternative project site design which orients the parking areas and driveway away from this site. Another benefit of the alternative plan could be the location of the tot lot away from the buildings, thus reducing the noise and activity level of children at play affecting residents of the project. The owner of 1329 Missouri Avenue has written a letter which requested a stockade fence be installed adjacent his property line which abutts the subject site. The OPD suggested that this request be a condition of approval. The OPD was of the opinion that the requested special exception has merit and that there are practical difficulties relating to the shape of the property which support the granting of the FAR variance. As to the OPD report, the Board, for reasons set forth below, does not concur that there is a basis to grant the variance. The Board therefore agrees with the OPD that the site plan should be redesigned, to eliminate the need for the variance and to address the concerns identified by the OPD and the adjoining property owners.

12. The Department of Transportation by memorandum dated December 16, 1980, reported that Missouri Avenue, on which the site fronts, is a major east-west crosstown facility that becomes Military Road west of 16th Street, and Riggs Road east of North Capitol Street. At the vicinity of the site, Missouri Avenue is a six lane roadway with a six foot painted median. Parking is permitted at all times on the north side of the street. On the south side of the street parking is prohibited from 6:00 a.m. to 9:30 a.m. The site is connected to Downtown, and the Silver Spring area in Maryland via several major streets, including 16th, 13th, and 14th Streets, and Georgia Avenue.

The Department's estimate of automobile work-oriented trips generated by the proposed development ranged from five to seven vehicles per hour during each peak hour. The Department considered that the proposed development will not affect the level of service that currently exists on the surrounding streets. The site is well served by several Metrobus routes on 16th Street and on Georgia Avenue, approximately 1500 and 800 feet respectively from the site. Service is provided at four to five minute intervals during both peak periods in the peak direction. Off-peak service is available at seven to ten minute intervals. Parking required under Zoning Regulations is one parking space for each dwelling unit. The applicant is providing nineteen spaces or one parking space above the minimum requirement. The additional space could be assigned for visitor use. Additional parking for visitors is available on Missouri Avenue. The Board concurs in the findings and conclusions of the Department.

13. The Superintendent of Schools, by memorandum dated December 10, 1980, reported that although it is anticipated that the two and three-bedroom units will have little impact on the public elementary schools in the area, it should be noted that the occupancy of the Brightwood School has consistently remained near or above capacity. At the secondary level, any additional students will have no impact on the schools. The Superintendent offered no objection to the proposed development.

14. There was no report from the Department of Housing and Community Development.

15. The National Park Service, by letter of December 10, 1980, reported that the National Park Service concurred in the application. The Park Service did request that all surface and roof drainage be directed off of National Park Service property known as U.S. Reservation 499 located along Missouri Avenue, N.W., within Square 2792. It further stated that if this project is approved, the Park Service would appreciate if the developer would provide the Park Service with the opportunity to review his preliminary development plans.

16. Advisory Neighborhood Commission - 4A filed no recommendation on the application. Single Member District Commissioner 4A02, by letter of December 15, 1980, stated that she had no objection to the application. The Board is required by statute to give great weight to the issues and concerns of the ANC that are submitted in writing. The Board is not required to give such weight to the recommendation of a single district commissioner.

17. At the close of the public hearing, the record was left open for the submission of an ANC report and the response of the applicant to the concerns raised by the adjacent property owner, Mr. Lightfoot, the concerns of the National Park Service and a response to the OPD recommendations.

18. At the public hearing, a resident from an apartment house on the south side of Missouri Avenue, directly across from the subject site, voiced concern about the adequacy of the number of parking spaces. The resident had no further opposition.

19. No additional report from the ANC was received in the record.

20. By letter of December 22, 1980, the applicant responded as follows:

A. As to the letter from the neighboring property owner:

The survey which was a part of the application, and on which the site plan is based was prepared by Snider, Blanchard, Laughland & Tachk, Inc. Also submitted was the Plat with boundaries supplied by the D.C. Surveyor's office. Both documents agree as to the description of the boundaries. The applicant concluded that the dimensions as drawn are correct.

2. As shown on the site plan, the surface drainage will be directed away from the adjoining properties and into area drains connected to the storm sewer system. The roof drains are also connected to the storm sewer system.
3. The District requires the submission of a soil erosion plan with the application for the permit. The builder will have to adhere to the plan. The applicant agreed that an attractive barrier be erected between Mr. Lightfoot's property and the proposed Missouri Mews site.
4. The applicant did not anticipate any adverse impact on the area's ecology as a result of the housing units' heating mechanisms, which shall be gas-fired.
5. Each housing unit will have trash compactors and trash collection will be from each housing unit by private trash collection.

6. The applicant would insist that the Contractor be bonded and insured.
7. The applicant provides nineteen on-site parking spaces for eighteen living units. It was the applicant's view that Missouri Mews will not adversely affect the parking situation in the neighborhood.

B. As to the letter from the National Park Service:

1. As stated in response to Mr. Lightfoot's letter, all surface and roof drainage will be directed away from the adjoining properties and into the storm sewer system.
2. If this project is approved, the applicant would be happy to have the National Park Service review the preliminary development plans.

C. As to the report of Office of Planning and Development:

1. The applicant contended that the unusual shape of the property makes it impossible to adhere to the FAR for building No. 2.
2. Some of the alternative proposals do not meet yard or court requirements of the Zoning Regulations.
3. The layout of the tot lot in either alternative is inappropriate.
4. The applicant argued that his proposed plan was superior to either OPD alternative because of better screening and privacy, and the location of the tot lot

21. The applicant contended that the shape of the property makes it impossible to meet the FAR limitations. The Board finds no basis for that conclusion. The site is a vacant property. The Board finds no reason that the site cannot be designed in such a manner that no FAR variance is required. The variance request arises out of the specific design proposed in this application. That design is not a condition of the property.

22. The applicant presented no testimony or evidence in the record as to what practical difficulty he would suffer if the Zoning Regulations were strictly applied.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception and a variance. In order to be granted the requested exception, the applicant must demonstrate that he has complied with the requirements of Paragraph 3105.42 and Sub-section 8207.2 of the Zoning Regulations. In order to be granted the requested variance, which is an area variance, the applicant must demonstrate the existence of an exceptional or extraordinary condition or situation of the property which creates a practical difficulty for the owner.

The Board concludes that the two areas of relief, the special exception and the variance, are completely intertwined. The need for the variance arises out of the specific design of the project, which the special exception must address. The Board concludes that the applicant has demonstrated no exceptional or extraordinary condition of the property to warrant granting a variance. The shape of the property is not rectangular. However, the site is vacant and the Board concludes there is no reason that the property cannot be developed in conformance with the floor area ratio requirements. The Board further concludes that the applicant has not established any practical difficulty he will suffer if the Zoning Regulations are strictly applied.

In concluding that the variance cannot be granted, the Board therefore requires that the design of the proposed development be altered. The Board cannot redesign the site for the applicant, and is unable to determine the nature of the specific changes required to bring the property into conformance with the regulations. The Board therefore concludes that the application in its entirety must be denied.

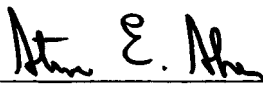
The Board notes that the site is suitable for development, and believes that under much of the special exception test, the application meets the requirements of the Zoning Regulations. The Board invites the applicant to redesign the project and submit a new application before the Board which does not require a variance. The Board further directs the applicant to be more responsive to the concerns of the Office of Planning and Development and the adjoining property owner in any new application.

In consideration of all the above reasons, it is therefore
ORDERED that the APPLICATION is DENIED.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Charles R. Norris,
and Connie Fortune to DENY; Douglas J. Patton not voting,
not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

23 APR 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR
ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING
BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND
PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13399, of Oliver A. Cowan, Jr., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3105.42 to permit the construction of two new principal apartment buildings and a variance from the floor area ratio requirements (Sub-section 3302.1) in an R-5-A District at the premises 1931-1353 1/2 Missouri Avenue, N.W., (Square 2792, Lot 802).

HEARING DATE: December 17, 1980

DECISION DATE: January 7, 1981

The Board DENIED the application by a vote of 4-0 (Walter B. Lewis, William F. McIntosh, Charles R. Norris and Connie Fortune to DENY; Douglas J. Patton not voting, not having heard the case).

FINAL DATE OF ORDER: April 23, 1981

ORDER

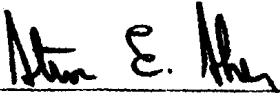
The applicant filed a timely Motion for Reconsideration of the Board's denial of the application on May 1, 1981. Upon a review of the Motion and the site plan attached thereto, the Board concludes that the Motion does not constitute a Motion for Reconsideration but rather a request by the applicant for the Board to approve revised plans for the site. There is no allegation of error on the part of the Board to support a Motion for Reconsideration.

The Board notes that the revised plans have not been reviewed by the office of the Zoning Administrator or the Office of Planning and Development, and that the revised plans do not appear to address all the issues cited by the Board. The Board concludes that it is premature to approve the revised plans as such. The remedy for the applicant is to file a new application. Accordingly, it is ORDERED that the Motion for Reconsideration and/or Request for approval of revised plans is DENIED.

VOTE: 3-0 (William F. McIntosh, Walter B. Lewis and Connie Fortune to DENY; Charles R. Norris not present, not voting; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

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FINAL DATE OF ORDER: 20 JUL 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."